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10/774,234	02/05/2004	Richard D. Stackenwalt	0112	6188

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EXAMINER

GILBERT, WILLIAM V

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,234
Filing Date: February 05, 2004
Appellant(s): STACKENWALT ET AL.

John M. Olivo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 April 2008
appealing from the Office action mailed 15 November 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,622,197

Valaire

4-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valaire (U.S. Patent No. 5,622,197).

Claim 1: Valaire discloses a suspended decorative structure comprising a panel (20) having opposed edges, first and second biasing members (45; see Fig. 5 generally, a biasing member would be in each corner of the panel), a first cable (42) attached to the first biasing member at a first end of the cable

and the second member at a second end of the first cable, the first cable cooperates with the first and second biasing members to maintain the panel in a flexed configuration. The species in Fig. 5 does not disclose the second and third cables attached to the biasing members; however the species in Fig. 8 discloses second and third cables (119; a cable would be in each corner) attached to the biasing members. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the species to achieve this limitation because the species are functionally equivalent and can perform equally as well. Second, while Valaire discloses attaching the second and third cables to structures (50) it does not disclose attaching the member to a wall. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to attach the member to a wall because a wall would perform the same function as the structure of element 50.

Claim 2: the biasing members have a body with a groove (see Fig. 7: portion between the top and bottom connected by 120 and containing members 111, 112.) The phrase "for receiving one of the opposed edges of the panel" lines 3, 4 is a statement of intended use and must result in a structural difference between the prior art of record and the claim. If the prior art is

Art Unit: 3635

capable of satisfying the limitation, then it meets the claim.

The groove portion can clearly receive an edge of the panel.

Claim 4: the biasing members have a cam (111) cooperating with the panel.

Claim 5: the biasing members have a jaw (111, 112, 113) cooperating with the panel.

Claim 6: the jaw is pivotable about a pivot point (portions 111 and 112 rotate about a center point and the entire assembly can rotate about portion 117.)

Claim 7: the panel is fabric (Col. 1, lines 50-55).

Claim 10: the first cable is tensioned by the panel (Fig. 1; note the weight of the cable maintains the panel in a tensioned state.)

(10) Response to Argument

The examiner respectfully disagrees with applicant's arguments regarding the prior art of record, in particular, that the Valaire reference (cited above), which states, "having such a flexible furling means allows the canopy to be any desired shape, since it is not limited or defined by the shape of the furling apparatus" (Col. 2, lines 30-33) teaches away from the claimed invention. The examiner used the Valaire reference in the rejection and noted in particular that two biasing members

(Fig. 5: element 45; a biasing member is present at each of the corners of the panel, which is element 20), and, as shown in Figure 2, a cable (42) connects the two biasing members. The examiner further notes that the limitation states that, as claimed, the first cable cooperates with the first and second biasing members to maintain the panel in a flexed configuration, and that no further structural limitation or relation of the panel, the biasing members or cable are provided in the claim.

It is the examiner's position that the applicant respectfully misinterprets the disclosure in Valaire which is the focal point of this argument. The examiner argues that the disclosure in Valaire is drawn to the variety of final, or installed, positions that the canopy structure has the capability of achieving. For example, Valaire provides that the cable (42) may be adjusted, it may be tensioned, or it may be relaxed to conform to whatever curved shape is desired. These configurations note a desired final product (e.g. a tensioned cable or a flexed cable.) See Column 2, lines 25-30. As shown in Figure 1 of the Valaire reference, the canopy (20) is in a flexed configuration. A different configuration is further shown in each of Figures 3B-3E, each resulting in a flexed canopy. Regardless of whether the cable is tensioned or flexed, a flexed configuration of the panel is maintained once the panel

is in the installed position. Further, the limitation "flexed configuration" does not limit the panel to a solitary position. The examiner argues that a panel may still be maintained in a flexed position and still move. In other words, the degree of flexibility can change, so long as the panel has a degree of "flex", the Valaire reference meets the limitation as claimed in that the "flex" is maintained in the canopy.

The examiner further disagrees with applicant's argument that the canopy (20) is not a panel. The examiner first wishes to note that in Claim 1, applicant's only limitation to "a panel" is that it has opposed edges. The applicant provided no further limitations to define the panel in Claim 1. The applicant further notes in dependent Claim 7 that the panel can be made of fabric. Since the Valaire reference teaches that the canopy is fabric (Abstract: line 3,) the examiner concluded, based on applicant's own limitations, that a fabric material can define "a panel", and thus the canopy (20) in Valaire is a panel.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William V Gilbert/

Examiner, Art Unit 3635

/Richard E. Chilcot/

Supervisory Patent Examiner, Art Unit 3635

Conferees:

Brian Glessner /BG/

Richard E. Chilcot, Jr. /R. E. C./

Supervisory Patent Examiner, Art Unit 3635